

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE

ARTOSS, INC.

PLAINTIFF

v.

Case No. 1:20-cv-00741

ARTOSS GmbH

DEFENDANT

ARTOSS GmbH

COUNTER-CLAIMANT

v.

ARTOSS, INC.

COUNTER-DEFENDANT

**FINAL JURY INSTRUCTIONS – DAMAGES**

### **Instructions**

This is the second phase of a two-part trial, in which you will determine the existence and amount of damages. You have determined that Artoss GmbH is liable to Artoss, Inc. for breach of contract.

You will now determine whether Artoss, Inc. has been damaged as a result of Artoss GmbH's actions, and, if so, what amount of damages Artoss, Inc. is entitled to. As you are making these determinations, remember that all of the instructions I provided to you for the liability portion of this trial continue to apply. You must use the previously stated rules to assess credibility and weigh evidence.

### **Measure of Damages – Breach of Contract**

You have found that Artoss GmbH breached the Distributor Agreement between Artoss, Inc. and ARTOSS GmbH. Accordingly, you must now determine what amount of damages, if any, is necessary to compensate Artoss, Inc. for this breach, in order to place it in the same position it would have been in if the Distributor Agreement had been properly performed. The measure of damages is the loss actually sustained as a result of the breach of the contract. These are called “expectation damages.”

### **Duty to Mitigate Damages – Breach of Contract**

Generally, the measure of damages for one who is harmed by a breach of contract is tempered by a rule requiring that the injured party make a reasonable effort, whether successful or not, to minimize the losses suffered. To mitigate a loss means to take steps to reduce the loss. If an injured party fails to make a reasonable effort to mitigate its losses, its damage award must be reduced by the amount a reasonable effort would have produced under the same circumstances. This reduction, however, must be measured with reasonable probability.

### **No Consequential Damages**

In following the instructions above, you may award only “direct” breach of contract damages, not “consequential” breach of contract damages. Direct damages are those inherent in the breach and which are the “necessary and usual result” of the alleged wrong that “flow naturally and necessarily” therefrom. Consequential damages, on the other hand, are those that result “naturally but not necessarily” from the alleged breach, because they require an additional “contract or relationship” to exist.